

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILHAMENA SHIRLEY and DEPARTMENT OF HEALTH & HUMAN  
SERVICES, Window Rock, AZ

*Docket No. 00-1827; Submitted on the Record;  
Issued April 23, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury in the performance of duty on July 19, 1999; and (2) whether the Office of Workers' Compensation Programs properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On July 19, 1999 appellant, then a 28-year-old materials handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on July 19, 1999 she sustained a lower back injury as a result of lifting heavy boxes. Appellant did not stop work.

In a July 21, 1999 duty status report, a physician whose name was illegible, indicated that appellant could return to her usual occupation on July 26, 1999 and remarked that appellant should lift with her legs rather than her back and wear a back support.

On October 6, 1999 the Office requested additional information from appellant. Specifically, the Office requested a comprehensive medical report describing her symptoms, results of examinations and tests, diagnosis, the treatment provided, the effect of treatment and the doctor's opinion, with medical reasons, on the cause of the condition. Appellant was given approximately 30 days to respond.

In a November 15, 1999 decision, the Office denied appellant's claim for compensation because fact of injury was not established.

On March 23, 2000 appellant requested reconsideration. She indicated that she was new at the time of her injury and she was not given the proper documentation for medical help. Appellant also asserted that she assumed the duty-status report was sufficient. She did not provide additional medical documentation.

In an undated statement which was received by the Office on April 4, 2000, appellant's supervisor indicated that appellant was unable to provide the proper medical documentation due

to bureaucratic procedures and that her supervisors did not instruct her properly when she was initially injured.

By decision dated April 7, 2000, the Office denied merit review on the grounds that appellant did not include any medical evidence or any relevant legal arguments.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on July 19, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Elaine Pendleton*, *supra* note 1.

<sup>4</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

In the instant case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed her claim for compensation. Nevertheless, a person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence, a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.<sup>6</sup> In this case, appellant failed to submit any medical evidence providing a firm diagnosis of an injury or addressing whether her injury was related to her July 19, 1999 work incident. The only medical evidence submitted by appellant was the July 21, 1999 duty-status report from a physician whose name was illegible. The report stated that appellant should lift with her legs, rather than her back and she could resume her usual occupation on July 26, 1999. The report did not contain a diagnosis nor did it express any opinion that appellant's condition was causally related to the incident or medical rationale supporting such an opinion based upon a complete history.<sup>7</sup> Consequently, appellant's medical records failed to state that there was a causal relationship between the diagnosed condition and the employment incident of July 19, 1999.<sup>8</sup> The Office advised appellant of the deficiency in the medical evidence, but appellant failed to submit rationalized medical opinion evidence addressing the relevant issues. Appellant, therefore, failed to meet her burden of proof.<sup>9</sup>

Furthermore, the Board finds that the Office properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

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<sup>5</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>6</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

<sup>7</sup> *Arlonia B. Taylor*, 44 ECAB 591 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> The Board notes that subsequent to the Office's April 7, 2000 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>10</sup>

In the present case, appellant filed a request for reconsideration on March 23, 2000. Additional evidence followed the November 15, 1999 decision denying appellant’s claim. The new evidence included statements from appellant and her supervisor.

In its November 15, 1999 merit decision, the Office found that appellant did not meet her burden of proof because she had not submitted medical evidence supporting that her claimed condition was work related. The only medical report submitted from appellant contained no history of injury, diagnosis, examination findings or opinion on causal relationship.

On reconsideration, appellant submitted her statement dated March 23, 2000 wherein she indicated she was new to the position at the time of her injury and she was not given the proper forms. She stated that she was not instructed how to do proper documentation submittal. Additionally, appellant asserted that she was back to work full time by mid October 1999 and assumed the duty-status form was what she needed. However, the Office advised appellant on October 6, 1999 that the duty-status form was insufficient and advised her that a detailed narrative report from her physician that included a diagnosis, treatment provided and an opinion on the relationship of the diagnosed condition to the federal employment was required. Additionally, the undated statement from her supervisor discussed problems with obtaining documentation but did not include a medical report. The statements provided by appellant and her supervisor were not relevant and pertinent new evidence not previously considered by the Office, as the issue in the claim was medical. She did not provide any medical evidence on reconsideration. Appellant did not show that the Office erroneously applied or interpreted a specific point of law nor did she advance a relevant legal argument not previously considered by the Office.

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<sup>10</sup> 20 C.F.R. § 10.608(b) (1999).

As appellant's March 23, 2000 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review of her claim, the Board will affirm the Office's April 7, 2000 decision denying her request.<sup>11</sup>

The decisions of the Office of Workers' Compensation Programs dated April 7, 2000 and November 15, 1999 are hereby affirmed.

Dated, Washington, DC  
April 23, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> 20 C.F.R. § 10.606(b)(2).